



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Department of Social and Health Services, Aging and Disability Services Administration

Emergency Rule Only

Effective date of rule:

Emergency Rules

- ☒ Immediately upon filing.
☐ Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- ☐ Yes ☒ No If Yes, explain:

Purpose: The department is amending sections to the boarding home rules, adding sections and repealing a section to comply with Initiative 1163 recently passed by Washington state voters. Initiative 1163 requires national fingerprint background checks for long-term workers hired after January 1, 2012. It is estimated that it may be as long as three weeks and possibly longer before the national fingerprint background check results are received. RCW 43.43.837 (6) gives the department authority to adopt rules authorizing provisional hiring. Therefore, the department needs to adopt emergency rules to allow boarding homes to hire long-term care workers provisionally, pending the results of the fingerprint based background check and following a name and date of birth background check result that shows no disqualifying crimes or findings.

WAC 388-78A-24681 and WAC 388-78A-24701 are new sections.

Citation of existing rules affected by this order:

Repealed: WAC 388-78A-2463

Amended: WAC 388-78A-2461, WAC 388-78A-2462, WAC 388-78A-2464, WAC 388-78A-2465, WAC 388-78A-2466, WAC 388-78A-2468, and WAC 388-78A-2469.

Suspended: None

Statutory authority for adoption: Chapters 18.20 RCW

Other authority: NA

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- ☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- ☐ That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: Boarding homes often experience a significant amount of staff turnover. If a new boarding home employee is prevented from having unsupervised access to resident for several weeks, boarding homes may experience staffing shortages and the residents may suffer from a lack of caregivers. Without adequate staffing, the health and safety of resident could be jeopardized.

Date adopted:

February 17, 2012

NAME (TYPE OR PRINT)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 22, 2012

TIME: 9:58 AM

WSR 12-05-115

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>2</u>	Amended	<u>7</u>	Repealed	<u>1</u>

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>2</u>	Amended	<u>7</u>	Repealed	<u>1</u>
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>2</u>	Amended	<u>7</u>	Repealed	<u>1</u>

AMENDATORY SECTION (Amending 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2461 Background checks--General. (1) Background checks conducted by the department and required in this chapter include ((but are not limited to)):

((+1)) (a) Washington state name and date of birth background checks ((including:

(a) Department and department of health findings)); and

(b) ((Criminal background check information from the Washington state patrol and the Washington state courts;

(+2)) After January 1, 2012, a national fingerprint((-based)) background check in accordance with RCW ((74.39A.055)) 74.39A.056.

((+3)) (2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the boarding home.

((+4)) (3) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW ((74.39A.050(+8))) 74.39A.051(8).

AMENDATORY SECTION (Amending 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2462 Background checks--((Washington state--)) Who is required to have. (1) Applicants for a boarding home license, as defined in WAC 388-78A-2740, ((are required to have a Washington state)) must have the following background checks before licensure:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(2) For purposes of this section, the administrator is presumed to provide direct care.

(3) For purposes of this section the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009 and chapter 388-112 WAC.

(4) The boarding home must ensure ((the following have Washington state)) that the administrator and all caregivers employed directly or by contract after January 1, 2012 have the following background checks:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(5) The boarding home must ensure that the following individuals have a Washington state name and date of birth background check. They are not required to have a national fingerprint background check:

(a) ((Caregivers, including)) Volunteers who are not

residents, and students who may have unsupervised access to residents;

~~(b) ((Administrators;~~

~~(c) Licensee;~~

~~(d)) Staff persons other than caregivers and administrators;~~

~~((e)) (c) Managers unless they provide direct care to residents; and~~

~~((f)) (d) Contractors other than the administrator and caregivers who may have unsupervised access to residents.~~

AMENDATORY SECTION (Amending 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2464 Background checks--Process. (1) Before the boarding home employs, directly or by contract, an administrator, staff person or caregiver, or accepts as a caregiver, any volunteer who is not a resident, or student, the home must:

(a) Require the person to complete a DSHS background authorization form; and

(b) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.

~~(2) ((For purposes of this section, the administrator is presumed to provide direct care)) After receiving the results of the Washington state name and date of birth background check the boarding home must:~~

~~(a) Not allow individuals to have unsupervised access to residents if they have been convicted of a disqualifying crime or finding under WAC 388-78A-2470.~~

~~(b) Require individuals listed in WAC 388-78A-2462(2), who are hired after January 1, 2012 and are not disqualified by the Washington state name and date of birth background check, to complete a national fingerprint background check and follow department procedures.~~

AMENDATORY SECTION (Amending 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2465 Background check--Results. ~~((1) The boarding home must not allow the persons listed in WAC 388-78A-2462(2) to have unsupervised access to residents until the boarding home receives background check results from the department verifying that the person does not have any convictions, or findings described in WAC 388-78A-2470.~~

~~(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the~~

~~person has the character, suitability and competence to work with vulnerable adults in long-term care.~~

~~(3))~~ After receiving the results of the background checks,
the boarding home must:

~~((a))~~ (1) Inform the person of the results of the background checks;

~~((b))~~ (2) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

~~((c))~~ (3) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

AMENDATORY SECTION (Amending 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2466 Background check--Washington state name and date of birth background check--Valid for two years. A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The boarding home must ensure:

(1) A new DSHS background authorization form is submitted to BCCU every two years for individuals listed in WAC 388-78A-2462; and

(2) There is a valid Washington state name and date of birth background check for all individuals listed in WAC 388-78A-2462.

AMENDATORY SECTION (Amending 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2468 Background checks--Employment--Conditional hire--Pending results of Washington state name and date of birth background check. The boarding home may conditionally hire an individual described in WAC 388-78A-2462, directly or by contract, pending the result of ~~((a))~~ the Washington state name and date of birth background check, provided that the boarding home:

(1) Submits the background authorization form for the individual to the department no later than one business day after the individual starts working;

(2) Requires the individual to sign a disclosure statement, and the individual denies having been convicted of a disqualifying crime or have a disqualifying finding under WAC 388-78A-2470;

(3) Has received three positive references for the individual;

(4) Does not allow the individual to have unsupervised access to any resident;

(5) Ensures direct supervision(~~((, of the individual,))~~) as defined in RCW 18.20.270, of the individual; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

NEW SECTION

WAC 388-78A-24681 Background checks--Employment--Provisional hire--Pending results of national fingerprint background check. The boarding home may provisionally employ caregivers and an administrator hired after January 1, 2012 as specified in WAC 388-78A-2462(2) for one hundred and twenty-days and allow those individuals to have unsupervised access to residents when:

(1) The individual is not disqualified based on the results of the Washington state name and date of birth background check; and

(2) The results of the national fingerprint background check are pending.

AMENDATORY SECTION (Amending 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2469 Background check--Disclosure statement. (1) Prior to first starting his or her duties, the boarding home must require each individual described in WAC 388-78A-2462 to make disclosures ((7)) of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the individual under penalty of perjury.

(2) The department may require the boarding home or any individual described in WAC 388-78A-2462 to complete additional disclosure statements or background authorization forms if the department has reason to believe that offenses specified in WAC 388-78A-2470 have occurred since completion of the previous disclosure statement or background check.

NEW SECTION

W A C 3 8 8 - 7 8 A - 2 4 7 0 1 B a c k g r o u n d
checks--Employment--Nondisqualifying information. (1) If any background check results show that the person has a conviction or finding that is not automatically disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this chapter should be interpreted as requiring the employment of any person against the better judgment of the

boarding home.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-78A-2463

Background check--National
fingerprint checks--Who is required
to have.